

REMARKS

Reconsideration and allowance of the subject patent application are respectfully requested.

Non-elected claims 7-38 and 49-54 have been canceled without prejudice or disclaimer. Applicant reserves the right to file divisional application(s) directed to the subject matter of these non-elected claims.

Amendments of a formal nature have been made to claims 46-48.

Claims 39-48 and 55-58 were rejected under 35 U.S.C. Section 103(a) as allegedly being "obvious" over Wayne et al. (U.S. Patent No. 5,006,983).¹ For the reasons set forth below, Applicant traverses this rejection.

Claim 39 is directed to an exercise system, comprising a plurality of exercise machines; and a computer connected to the exercise machines via a communication link, the computer comprising a user interface usable by an exerciser for scheduling future use of at least one of the exercise machines. Claim 39 has been amended to describe that the user interface provides a use status for one or more of the exercise machines.

Wayne et al. relates to a system for allocating service resources to customers. The office action notes that Wayne et al. discloses a computer connected to a communication link and the computer comprises a user interface for scheduling future use. The office action concludes that it would have been obvious to use Wayne et al.'s system for scheduling the use of exercise equipment, "as it is well known to schedule the use of exercise equipment in health clubs" and "as Wayne et al.'s system lends itself to any type of scheduling." 4/19/2005 Office Action, page 2.

Wayne relates to a system for serving travel agency customers. The customers are given pagers, which are used to notify the customers when an agent becomes available. Wayne et al., col. 4, lines 56-58. The customers who are waiting to be paged are organized into a set of queues. Wayne et al., Figure 7; col. 12, lines 40-42. Wayne et al. clearly does not disclose and is unrelated to exercise machines. Nothing in the travel agency system of Wayne et al. is

¹ The statement of the rejection on page 2 of the office action identifies "Waytena et al." as the basis for the rejection. However, the body of the rejection makes reference to portions of Wayne et al. and thus Applicant concludes that the reference to "Waytena et al." should be to Wayne et al.

suggestive of exercise machines and Applicant respectfully submits that the subject matter of claim 39 cannot be fairly derived from Wayne et al.

The office action alleges that it is well known to schedule the use of exercise equipment in health clubs. However, there is no documentary evidence in support of this assertion. The office action alleges that Wayne et al.'s system lends itself to any type of scheduling. However, this is belied by the disclosure of Wayne et al. itself, which focuses on a description of a travel agency. There is no evidence to support an assertion that the Wayne et al. system lends itself to other type of scheduling, much less to all types of scheduling.

In addition, even under the view of Wayne et al. in the office action, there is nothing suggestive of providing a use status for one or more of the exercise machines as currently claimed.

Consequently, claim 39 and its dependent claims are believed to be allowable.

Claim 44 is directed to an exercise machine that includes a user interface usable to schedule future use of another exercise machine. Applicants again respectfully submit that the concept of scheduling future use of an exercise machine cannot be fairly derived from Wayne et al. In addition, even under the view of Wayne et al. in the office action, there is nothing that corresponds to providing an exercise machine itself with the capability to schedule future use of another exercise machine. There is no discussion in the office action about where Wayne et al. discloses this concept or how this concept can be derived from Wayne et al.

Consequently, claim 44 and its dependent claims are believed to be allowable.

Claim 55 is directed to an exercise machine scheduling system including a user interface for scheduling future use of an exercise machine. This claim and its dependent claims are believed to be allowable for reasons similar to those advanced above with respect to claim 39 including, among other things, the deficiencies of Wayne et al. in connection with providing a use status of an exercise machine.

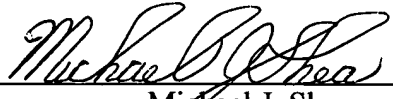
Applicant notes the discussion of *In re Venner* on page 3 of the office action. Applicant disagrees that this case is applicable here and notes that, among other things, there is no identification of what manual and automatic operations are purportedly at issue or what is the same result would be accomplished. Applicant also respectfully submits that the Federal Circuit

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has criticized reliance on *per se* rules of obviousness. *In re Ochiai*, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995).

The pending claims are believed to be allowable and favorable office action is respectfully requested.

Respectfully submitted,

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